

N.D.A.G. Letter to Myers (Aug. 20, 1986)

August 20, 1986

Mr. Earle R. Myers, Jr.
Richland County State's Attorney
Law Enforcement Center
Wahpeton, North Dakota 58075

Dear Mr. Myers:

Thank you for your letter of July 28, 1986, in which you ask whether the county treasurer may invest the moneys in a school district's Sinking Fund and Special Reserve Fund in a credit union when directed to do so by the school district.

N.D.C.C. § 21-03-40 provides that the county treasurer shall be the custodian of the Sinking Fund for the payment of bonds issued by a school district unless the school district approves a resolution designating the school district clerk as the custodian. N.D.C.C. § 21-03-41 requires the county treasurer to "keep the sinking funds of each taxing district on deposit in such public depository as may have furnished proper bond therefore and as may have been designated by the governing board of the taxing district." "Taxing district" is defined in N.D.C.C. § 21-01-01(1) to include a school district.

N.D.C.C. § 21-03-41 necessarily incorporates the legislatively prescribed means for depositing public funds as established in N.D.C.C. Ch. 21-04. N.D.C.C. § 21-04-05 provides that the governing board must designate a depository for its funds. The depository must be a "financial institution" situated and doing business within this state. "Financial institution" is defined to include state chartered or federally chartered credit unions insured by the National Credit Union Administration. N.D.C.C. § 21-04-01(3).

It is my opinion, therefore, that moneys in a school district's Sinking Fund may be deposited in a credit union. This would include the investment in either demand deposits or time deposits.

The foregoing analysis would also apply to the moneys in a school district's Special Reserve Fund. N.D.C.C. § 5719-02 provides that the moneys in the Special Reserve Fund of a school district may be invested or deposited in the same manner as the Sinking Fund of the district. Thus, the moneys in the Special Reserve Fund may be invested in a credit union.

Of course, the school district board and the county treasurer must comply with the requirements of N.D.C.C. Ch. 21-04. Initially, the board must designate the credit union as a lawful depository for its funds. N.D.C.C. §§ 21-04-05, 21-04-15. The board must also insure that the deposits are adequately secured by a surety bond or National Credit Union Insurance and/or pledge of securities. N.D.C.C. §§ 21-04-07, 21-04-08, 21-04-09.

Although the above analysis focuses on a school district's Sinking Fund and Special Reserve Fund, the same reasoning would also apply to other public monies of a school district. Thus, in response to your collateral question, a school district may invest funds held directly in a credit union.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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